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Report of the Secretary-General on the activities of the Office of Internal Oversight Services

Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Review of the Office of the Prosecutor at the International Criminal Tribunals for Rwanda and for the former Yugoslavia

Note by the Secretary-General

1. Pursuant to General Assembly resolutions 48/218 B of 29 July 1994 and 54/244 of 23 December 1999, the Secretary-General has the honour to transmit, for the attention of the General Assembly, the report, conveyed to him by the Under-Secretary-General for Internal Oversight Services, on the review of the Office of the Prosecutor at the International Criminal Tribunals for Rwanda and for the former Yugoslavia.

2. The Secretary-General takes note of the findings and concurs with its recommendations.

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Report of the Office of Internal Oversight Services on the review of the Office of the Prosecutor at the International Criminal Tribunals for Rwanda and for the former Yugoslavia

Summary

Pursuant to General Assembly resolution 57/289 of 12 February 2003, the Office of Internal Oversight Services (OIOS) conducted a review of the Office of the Prosecutor (OTP) at the International Criminal Tribunals for Rwanda (ICTR) and for the former Yugoslavia (ICTY).

At the time of the review, which was conducted in June and July 2003, one Prosecutor headed OTP. On 28 August 2003, the Security Council adopted resolution 1503 (2003) to create a separate post of Prosecutor for ICTR. This change has been taken into account in the present report.

The review concluded that the Prosecutor had undertaken initiatives to improve the performance of OTP through the use of information technology and making changes in working methods such as the way translations were carried out. However, best practices were not always shared between ICTY and ICTR OTP, which resulted in missed opportunities for building synergies. In addition, arrangements for planning and monitoring needed to be strengthened internally and in coordination with the other organs of the Tribunals. Overall, there was insufficient information to confirm the Tribunals' contention to the Security Council that OTP investigation and prosecution mandates would be completed by 2004 and 2008 respectively. OTP did not have a strategy document that formed part of a coordinated Tribunal-wide approach and which identified the factors that impacted on ICTR and ICTY ability to achieve the completion dates. Certain elements were present in the ICTY and ICTR proposed budgets for the biennium 2004-2005, which included a revised management structure, reduction and redeployment of OTP staff. However, nowhere were these clearly indicated as requirements to achieve the completion date.

The review found that delays in recruiting the ICTR Deputy Prosecutor and the Chief of Prosecutions were mainly attributable to inappropriate recruitment procedures followed by both OTP and the Registry. OTP construed the appointment of the Deputy Prosecutor as a political appointment not requiring a formal vacancy announcement, whereas the Registrar felt that he alone was to select the candidate to be appointed. To prevent such problems in the future, the Registry and OTP should agree on their respective roles in human resources management and ensure that OTP staff involved in recruitment procedures are provided with appropriate training to be able to fulfil their roles in accordance with United Nations regulations and rules.

The Prosecutors of ICTY and ICTR have accepted the recommendations made by OIOS and are in the process of implementing them.

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I. Introduction

1. Pursuant to General Assembly resolution 57/289 of 20 December 2002, the Office of Internal Oversight Services has conducted a management review of the Office of the Prosecutor (OTP) of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The objective of the review was to determine whether the Prosecutor had put adequate mechanisms in place to conduct the work of ICTY and ICTR OTP, in an efficient, economic and effective manner. The review put particular focus on issues related to the recruitment of the ICTR Deputy Prosecutor and of the Chief of Prosecutions. The review was conducted in June and July 2003 and covered OTP activities from January 2001 to July 2003. Audit activities included interviewing staff and reviewing available documentation of the Chambers, the Registry and OTP. A draft of the present report was discussed with the Prosecutors of ICTY and ICTR and their comments were included in the report as appropriate and are identified by the use of italics.

2. ICTY was established by the United Nations Security Council in its resolution 827 (1993) of 25 May 1993 with the mandate to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since January 1991. It comprises three organs, whose role and funding are shown in table 1.

Table 1
Role and funding (in 2002-2003) of ICTY organs

Organ	*Role*	*Regular budget*	*Voluntary funds*	*Total*
		Thousands of US dollars		
Chambers	The judges who hear testimony and legal arguments and decide on the innocence or the guilt of the accused and pass sentence	8 511	-	8 511
Office of the Prosecutor	Prosecution and investigation staff who conduct investigations, prepare indictments and present prosecutions before Chambers	79 807	1 129	80 936
Registry	United Nations Secretariat staff responsible for administrative and judicial support services	167 923	4 563	172 486
Total		**256 241**	**5 692**	**261 933**

Source: A/56/495 (budget for ICTY 2002-2003).

3. ICTR was established by the Security Council in its resolution 955 (1994) of 8 November 1994 with the mandate to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994. It comprises three organs, whose role and funding are shown in table 2.

Table 2
Role and funding (in 2002-2003) of ICTR organs

Organ	*Role*	*Regular budget*	*Voluntary funds*	*Total*
		Thousands of US dollars		
Chambers	The judges who hear testimony and legal arguments and decide on the innocence or the guilt of the accused and pass sentence	4 486	-	4 486
Office of the Prosecutor	Prosecution and investigation staff who conduct investigations, prepare indictments and present prosecutions before Chambers	50 563	354	50 917
Registry	United Nations Secretariat staff responsible for administrative and judicial support services	143 475	2 725	146 200
Total		**198 524**	**3 079**	**201 603**

Source: A/56/497 (budget for ICTR 2002-2003).

4. ICTR and ICTY each have a President of the Chambers and a Registrar. However, at the time of establishment of ICTR in 1994, article 15 (3) of its statute provided that the ICTY Prosecutor would also be the ICTR Prosecutor, creating a common Prosecutor for both Tribunals. On 28 August 2003, the Security Council decided[1] that ICTR should have its own Prosecutor.

5. At the time of the review, the Prosecutor was responsible for setting policies for both ICTY and ICTR OTP and for the overall management of her Office. ICTY and ICTR OTP were structured to reflect the two main statutory functions of the Prosecutor, namely the investigation of crimes within the Tribunal's jurisdiction and the prosecution of cases before the Chambers. The staffing levels in ICTY and ICTR OTP are shown in table 3 and the status of the prosecution cases is presented in table 4.

6. The different levels of staffing reflect differences in the extent of work involved in the two Tribunals. The ICTY mandate covers crimes committed in the territory of the former Yugoslavia from 1991 onwards, whereas the ICTR mandate covers crimes that took place during 1994 only. Consequently, ICTY has six field offices. The volume of documented material available to ICTY is also much greater. ICTY OTP informed OIOS that it had collected approximately 4 million document pages, 150,000 photographs, 8,000 hours of video and audio evidence, and 6,000 artefacts.

Table 3
Staffing levels in OTP

Organizational units in OTP	*ICTY*			*ICTR*		
	RB	*XB*	*Total*	*RB*	*XB*	*Total*
Immediate Office of the Prosecutor	11	2	13	3	-	3
ICTR Support Unit	4	-	4	-	-	-
Appeals Section	12	-	12	2	-	2
Information and Evidence Section	136	16	152	13	-	13
Prosecution Division	123	21	144	55	1	56
Investigation Division	273	15	288	104	4	108
Total number of staff in OTP	**559**	**54**	**613**	**177**	**5**	**182**

Source: Based on staffing reports of ICTY and ICTR as at 31 July 2003. The figures shown in the table reflect actual staffing levels i.e. excluding vacant posts.
Note: RB = Staff funded by regular budget, including general temporary assistance (GTA) staff.
XB = Staff funded by voluntary contributions.

Table 4
ICTY and ICTR status of prosecution cases as at 31 July 2003

	ICTY	*ICTR*
Accused in pre-trial stage	31	31
Accused currently on trial	4	18
Accused tried (including awaiting judgement/sentence)	46	13
Accused received their final sentence	20	8
Accused acquitted	5	1
Accused at appeal	12	4
Indicted but are yet to be arrested	18	17
Total accused appeared in the proceedings before the Tribunal since inception	**91**	**82**

Source: Based on information provided by OTP.

II. Overall management of OTP

A. Management of OTP

7. Article 15 (3) of the ICTR statute provided that "the Prosecutor of the International Tribunal for the former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda". OIOS expected that ICTY and ICTR OTP, with similar operational requirements and managed by a common Prosecutor, would share best practices and lessons learned to derive synergy. OIOS found that best practices between ICTY and ICTR OTP were not always shared and consequently

opportunities for building synergies were missed. The different management practices between ICTY and ICTR OTP, coupled with the very limited delegated authority of the ICTR Deputy Prosecutor, led OIOS to conclude that consideration needed to be given to ICTR having its own Prosecutor or that the authority of the Deputy Prosecutor to act on behalf of the Prosecutor needed to be strengthened. In the light of the decision of the Security Council in its resolution 1503 (2003) to create a separate post of ICTR Prosecutor, OIOS is not raising any observations on this issue in the present report.

B. Completion of mandate

8. The President of ICTY on 10 June 2002 transmitted a report (jointly prepared by the President, the Prosecutor and the Registrar) to the Security Council through the Secretary-General[2] stipulating the following deadlines for a phased completion of the ICTY mandate:

- Completion of investigations 31 December 2004
- Completion of trials 31 December 2008
- Completion of appeals 31 December 2010

9. Similarly, the President of ICTR, in the Tribunal's seventh annual report to the Security Council and to the General Assembly for the period ending 30 June 2002,[3] stated that investigations would be complete in 2003/2004 and trials in 2007/2008.

10. Based on the documentation made available by OTP, OIOS is of the opinion that the ICTY and ICTR OTP mandates as reported to the Security Council may not be achieved as:

(a) There was no evidence to support how the dates were arrived at and why they were similar, given that the nature, size and complexity of the crimes committed were not necessarily the same. *ICTY OTP commented that it did not agree with the comment that there was no evidence to support how the completion dates had been arrived at, at least in relation to the 2004 completion date. It was understood that the OIOS audit team had been shown documents relating to the work of the United Nations Group of Experts in 1999, when it was calculated by the Prosecutor, at that stage, that all investigations would be completed by 2004, and that assessment appeared in paragraphs 30 and 173 of the final report of the Group of Experts. That assessment, based on the number of remaining investigations and the utilization of staff dedicated to trial work, had been progressively and regularly reviewed, with consistent predictions since then that the 2004 target date was and is realistic.* OIOS appreciates management's comments, but notes that the United Nations Group of Experts in its report[4] stated that OTP estimated it would need about four years to finish the planned investigations. ICTY formally proposed the 2004 completion date for investigations to the Security Council only in June 2002. The Council endorsed the proposal in July 2002. ICTY OTP did not provide OIOS with documents outlining the envisaged time frame for each of the remaining investigations, which would have substantiated its assessment that the 2004 completion date was realistic.

(b) In July 2000, the Prosecutor stated that 36 investigations must be completed before she would be able to report to the Security Council that the

investigation part of the ICTY OTP mandate had been completed. In June 2002, she informed the Security Council that the figure had been revised to 25 new investigations to be completed by December 2004. In September 2002, ICTY OTP further revised its investigation targets, categorizing them as 16 "priority A" and 18 "priority B" cases. Plans were in place to complete the "A" cases by December 2004 and, if resources were available, also to complete the "B" cases. OIOS concluded that it was therefore unlikely that the 25 cases proposed in June 2002 would be finalized by December 2004.

(c) In July 2002, the Prosecutor revised her investigation programme for ICTR, from the original estimate of 136 new suspects to be investigated to 14, together with 10 ongoing investigations.[5] With the resulting 24 new indictments instead of the proposed 119 indictments stated in September 2001,[6] the investigation mandate would be completed. However, the number of targets for investigations in ICTR increased to 26 in May 2003.

11. The scaling down of OTP investigation cases in both Tribunals led OIOS to conclude that the revised targets represented a strategy to complete the existing workload in order to disengage from the mandate in the most expeditious manner possible. *ICTY OTP commented that the number of investigations to be completed by them was constantly reassessed and revised on the basis of (a) the evolution of the investigation and the evidence collected; and (b) the need to concentrate the efforts on the persons bearing the highest level of responsibility in the crimes committed. The issue was not so much the number of investigations actually completed as the need to ensure that the investigations completed concerned leaders responsible for the worst crimes and that the cases against them were well-prepared and strong. This was the wish of the international community, as expressed once again in Security Council resolution 1503 (2003).*

12. OIOS appreciates management's comments but notes that in the 2000 annual report, ICTY OTP had informed the General Assembly that the Prosecutor was now able to make a reasonable estimate of the investigative work that remained to be done and that, provided no new areas of conflict arose in the former Yugoslavia, 36 investigations had to be completed before the Prosecutor was able to report to the Security Council that the investigation part of the mandate had been completed.[7] OIOS was not presented with any evidence to support the assertions that revisions downward in the number of investigations to be completed from 25 to 16 in ICTY and 136 to 26 in ICTR were a direct consequence of "the evolution of the investigations and the evidence collected". Further, OIOS was not presented with any evidence to support the suggestion that the change was due to "the need to concentrate the efforts on the persons bearing the highest level of responsibility". As mentioned in the 2002 annual report to the Security Council and the General Assembly, the Prosecutor has been "directing her penal policy at prosecuting the major political and military leaders and leaving the lower-ranking subordinates to be tried by the national courts"[8] from the outset. In the absence of any other explanation, OIOS cannot rule out the possibility that the current reductions in numbers of investigations are driven by the completion dates.

C. Planning and monitoring

Completion strategy document

13. The Prosecutor made the first reference to a completion strategy in her November 2001 address to the Security Council. The completion strategy was not supported by a document that outlined a coordinated Tribunal-wide approach or identified the factors that might impact the ability of ICTY and ICTR OTP to achieve the completion dates. Certain elements of the required analysis, such as the reduction and redeployment of OTP staff, were present in the proposed budgets of ICTY and ICTR for the biennium 2004-2005. However, the completion strategy also needs to address issues such as the following:

(a) The necessity for retaining 85 per cent of the staff for trial-related work. OIOS accepted the OTP position that it was not possible to accurately predict the level of investigative resources required to support trial activity. However, after nine years of Tribunal operation, OIOS was of the opinion that it should be possible to estimate and explain the extent of resources required exclusively for trial work. *ICTY OTP commented that this criticism ignored the reality that it was not possible in 2003 to accurately predict the level of investigative support required to support all trial activity (including pre-trial work) after 2004. It was not possible to predict the actual number of trials that would be before the ICTY Chambers, mainly because it was not known how many indicted accused would be surrendered, or how many separate trials would be necessary because of the number of non-arrested fugitives. Additionally, there was some uncertainty as to the number of trials that the OTP would be responsible for trying at any given time, according to the scheduling of cases by the Trial Chamber. It was only in the past year that the number of cases in the court and in the pre-trial stage had been relatively constant. It should be possible in the future, if the number of cases remained the same, to make better estimates. The other problem with estimates was that each case was different. Therefore, until the actual trial workload was determined, it was not possible to estimate the number of staff required to prosecute them. Although it was clear that a reduction of investigator posts would be necessary, it was not possible to predict the actual extent of this reduction in the light of the above uncertain factors. When the actual workload was determined, in the light of the reality after 2004, then and only then would it be possible to determine the actual workload, and make decisions accordingly.* In the opinion of OIOS, given the experience with past trials and taking into account the maximum courtroom capacity, OTP should be able to provide at least an estimate of the investigative resources required for trial purposes for the next biennium. Further, it is also relevant to note that the Advisory Committee on Administrative and Budgetary Questions in its report pointed out that "the process of determining the number of posts to be abolished, redeployed or retained [in OTP] does not appear to be transparent from either the budget document or the supplementary information provided to the Committee, nor is it supported by a thorough analysis of workload indicators".[9]

(b) OTP proposed to give priority to reducing temporary staff. OIOS is of the opinion that as the temporary posts are project-oriented they should be abolished on completion of the project and the regular posts should be reduced on completion of investigations.

(c) As for cases that could be referred to national courts, ICTY had not yet established the criteria for the selection of perpetrators. ICTR was still in the process of seeking alternative national jurisdictions because the 40 cases that could be transferred to local national jurisdiction were precluded from being so transferred because of the prevalence of the death penalty. *ICTY OTP commented that it had sought, in its budget proposal, the creation of a "transition team" that would have the responsibility for preparing cases for transfer to domestic courts in national jurisdictions.*

(d) Although the Registry is responsible for archiving, OTP needs to determine which documents are required to be retained, how they should be retained and the duration of the retention period. The most cost-effective archiving method cannot be determined until a document retention policy has been established.

14. OIOS is of the opinion that the impact on the local economy of closing ICTR should be considered. The ICTR Registrar should identify appropriate United Nations agencies such as the United Nations Development Programme to assess this impact and report the results to the General Assembly.

Steering committees

15. To monitor progress towards the completion dates, steering committees need to be put in place comprising senior representatives of all organs, with a mandate and terms of reference which explain their roles and responsibilities. Both ICTR and ICTY have initiated working groups which partly achieve this objective, and which need strengthening along the lines outlined above.

Planning and performance monitoring

16. To assist the Steering Committees and to provide feedback on progress made in achieving the completion strategy for both Tribunals, OIOS considers that it is important to be able to monitor performance against plan. The Prosecutor conducts regular reviews of ongoing investigations and prosecutions, which in the opinion of OIOS needs strengthening for the Investigations Division:

(a) The Prosecutor had fixed deadlines for the different investigation cases. These were not contained in the 2003 staff work plans and there were no specific timelines, key milestones or performance indicators related to goals or the resources required to achieve them. OIOS believes these are key parameters for planning and performance monitoring.

(b) Some investigation teams measure progress against OTP-prepared annual targets. For effective performance monitoring, all teams should have a common approach to measuring progress, which should include the collection of information on task execution to enable analysis of efficiency and effectiveness.

(c) OTP reduced the number of investigations to be finalized from 25 to 16 in ICTY within a span of two months. ICTY asserted in September 2002 that this was due to inadequate resources, but OIOS was not presented with any documentation explaining what level of resources could have prevented this or the specific reasons for the sudden inadequacy of resources within the two months. Similarly, at ICTR, there was a significant scaling down of the number of proposed indictments from 119 in September 2001 to 26 in May 2003. In the opinion of

OIOS, these indicate the need to improve arrangements for planning and performance monitoring.

17. *ICTY OTP commented that the Prosecutor constantly reviewed the progress of all investigations, to ensure that OTP resources were adequately allocated to cases concerning leaders bearing the greatest responsibilities in the crimes falling within the ICTY jurisdiction. The fact that the numbers changed as a result of a normal review process did not mean that current management information and monitoring techniques needed to be improved. Instead, the change in numbers indicated clearly that OTP was responsive to the allocation and maximization/optimal use of its resources, and to the requests by the Security Council for it to narrow the scope of its completion strategy. It was therefore inaccurate to explain the reduction of the number of targets only by inadequate resources. Additionally, it should be underlined that effective performance-monitoring measures were already implemented in ICTY OTP but, due to the extreme confidentiality of ongoing investigations, written documents thereof were kept to a minimum.* OIOS is pleased to note that ICTY OTP has agreed to OIOS recommendation 1 (c) to further develop appropriate planning and monitoring mechanisms.

18. OIOS noted that OTP was working on the development/enhancement of management tools and computerized systems to improve the quality of case preparation as well as presentation, and to assist management in monitoring the progress of work. According to OTP management, the implementation of the trial presentation software in ICTY had resulted in savings of 20-25 per cent in time spent in court for two trials held in 2003.

D. Information presented by OTP to the Security Council

19. OIOS noted that the number of investigations initiated and to be completed was not presented to the Security Council by OTP in a consistent and unambiguous format. While this can be partly attributed to the nature of investigative work, OIOS is of the opinion that OTP should develop systems to ensure that information is presented to the Security Council in a consistent manner. *ICTY OTP commented that the fact that the numbers changed as a result of a normal review process did not mean that the current monitoring and reporting techniques needed to be improved, or indeed even that they could be improved.* OIOS appreciates the ICTY OTP comments and is pleased to note that it has agreed to OIOS recommendation 1 (d) to further develop mechanisms in order to ensure that reports are duly communicated both internally, to the OTP staff, and to the Security Council and the General Assembly.

III. Human resources management

A. Ability of the Prosecutor to choose her own staff

20. Under the new staff selection system introduced in the United Nations in May 2002, as spelled out in administrative instruction ST/AI/2002/4, the head of a department/office selects a candidate based on a single proposal or list of qualified unranked candidates presented by the programme manager. The ICTR Registry interpreted this as meaning that the Registrar not the Prosecutor was the head of

department/office who would select an OTP candidate. However, articles 15 (3) and 16 (5) of the ICTR and ICTY statutes respectively state that the Secretary-General should appoint OTP staff recommended by the Prosecutor. To resolve the issue the United Nations Office of Human Resources Management sought the advice of the Office of Legal Affairs on behalf of ICTR. The Office of Legal Affairs concluded that "the responsibility and authority assigned to the heads of department/office, as provided in the relevant administrative issuances, in the two Tribunals should be exercised by the Registrars. The staff for the Office of the Prosecutor should be appointed by the Secretary-General upon recommendation of the Prosecutor, as provided for by articles 16 (5) and 15 (3) of the respective statutes." In the opinion of OIOS, this means that the ICTR Registrar, on behalf of the Secretary-General, should appoint only a candidate recommended by the Prosecutor, provided all recruitment procedures had been complied with.

21. At the time of the OIOS review, the new staff selection system had not yet been introduced in ICTY.

B. Delays in recruitment of the ICTR Deputy Prosecutor and the Chief of Prosecution

22. As requested by the General Assembly in its resolution 57/289, OIOS followed up on the reasons for delay in recruitment for the posts of Deputy Prosecutor and of Chief of Prosecution, which had fallen vacant in 2001 and were filled early in 2003. Based on the documents available and statements made by OTP and the Registry staff, the main reasons for the delays in recruitment were:

(a) OTP did not have a good understanding of United Nations recruitment rules and procedures. OTP had initially construed the appointment of the Deputy Prosecutor as a political appointment not requiring a formal vacancy announcement and had searched, unsuccessfully, for an African Deputy Prosecutor to better comprehend the historical perspectives of the genocide. OTP had also attempted to recruit a candidate at the P-3 level to fill the D-1 position.

(b) Delays occurred on the part of OTP in initiating vacancies and on the part of the Registry to re-advertise the post.

(c) The Registrar and the Prosecutor disagreed as to who had the authority to make the final decision for the selection of staff for OTP.

(d) Four vacancy announcements were issued for the post of Chief of Prosecution because no suitable candidate was identified. In the case of the third vacancy announcement, there is a dispute as to whether the candidate satisfied the criteria; this is currently under investigation.

23. To prevent such problems in the future, the Registry and OTP should need to understand and respect their respective roles in human resources management and ensure that OTP staff involved in recruitment are provided with training in how to fulfil their roles in accordance with United Nations regulations and rules.

C. General temporary assistance

24. As of June 2003, OTP had 238 general temporary assistance (GTA) staff in ICTY and 4 GTA staff in ICTR. The use of these staff members was consistent with the rules. However, ICTY OTP had not established criteria to assess its need for GTA staff, for which funds of more than $10 million were available in the biennium 2002-2003.

D. Use of consultants and individual contractors by ICTR OTP

25. ICTR OTP engaged expert witnesses, nurses and trauma counsellors as consultants and individual contractors. OTP repeatedly informed the Registry that service breaks between contracts for nurses and trauma counsellors impacted its work. To accommodate OTP, the ICTR Registry recruited some individuals initially as consultants and later as contractors for the same assignment in contravention of administrative instruction ST/AI/1999/7, entitled "Consultants and individual contractors". From a sample of 4 out of a total of 20 consultants and individual contractors engaged during the period from January 2000 to June 2003, there was only a single case where the Registry had approached the Office of Human Resources Management for an approval to extend the contract beyond the maximum allowable period of 24 months in any 36-month period. Though the Office of Human Resources Management approved the extension, the Registry did not adhere to the Office's instructions that no further extension should be granted beyond the specified date of 15 December 2001 and to create posts using GTA funds. Those individuals were not appropriately hired as consultants and contractors. The continuing need, and its transient nature, suggest to OIOS that these individuals should be employed as GTA staff as recommended by the Office of Human Resources Management, or alternatively proposals should be made for the establishment of regular posts.

E. Translation of OTP documents

26. At ICTY, to reduce its backlog of document translation in 2002, OTP, in consultation with the ICTY Conference and Language Support Section, hired language support staff using GTA funds. The translations provided were not "certified translations", that is, translations by translators who had passed the United Nations translation examinations. However, the decision speeded up translation (12 pages as compared to 6 pages a day) and resulted in significant cost savings (US$ 14 as compared to $81 per page).

27. This change of approach also meant that, as of 8 July 2003, OTP had 116 language support staff, the size of which suggested to OIOS that there was a need for OTP and the Registry to consider whether it was efficient to use OTP resources to manage document translation. In addition, the outputs from 42 staff members were not subject to quality control and the number of pages they translated were not recorded. OTP could not provide justification for not consolidating these staff into one unit for more effective management. *ICTY OTP commented that it had duly noted these comments and was in the process of implementing the recommendations. The management of OTP language support staff was being consolidated to improve the monitoring of the output and the quality of the work produced. The language*

support staff were being integrated into the Documents and Video Indexing Unit so as to ensure appropriate coordination and more effective management of the resources available.

28. At ICTR, as at June 2003, there was a backlog similar to that experienced by ICTY in 2002. In this instance, OTP, in conjunction with the Registry, decided to tackle the backlog differently. OTP prioritized the list of documents pending translation and used the services of the interpreters with the investigation teams in Kigali to perform summary translations and filter irrelevant documents being sent to Arusha for certified translation. The approach has been effective but there has been no consideration of supplementing this approach by considering the ICTY practice of using uncertified translations.

IV. Voluntary contributions and special operations funds

A. Establishment of trust funds

29. A general trust fund for the receipt of voluntary contributions had been properly established for ICTY in 1993 and ICTR in 1994 in accordance with the provisions of Secretary-General's bulletin ST/SGB/188, entitled "Establishment and management of trust funds". The purpose of the trust funds was to support the activities of the Tribunals to enable them to fulfil their mandates.

B. Receipt and recording of funds

30. The United Nations Office of Programme Planning and Budget Accounts accepted and received voluntary contributions, and signed donor agreements, on behalf of ICTR. However, the ICTR Registry did not receive copies of the donor agreements from the Office. Consequently, there were risks that ICTR did not use funds in accordance with the provisions of donor agreements. The Board of Auditors reported such an instance in its report.[10] In 2001, a Government queried the use of its contributions of $3 million earmarked in 1995 for ICTR OTP. ICTR was unaware of the existence of the agreement and did not comply with the donor's requirements, which stated that the balance of any unused contributions, after all commitments and liabilities had been satisfied, should be reimbursed to the Government unless mutual written agreement was reached on the use of funds. In the opinion of OIOS, ICTR is potentially liable to reimburse the donor Government approximately $2.5 million of the contribution which was not utilized within the period specified by the agreement. In ICTY, the Registrar receives voluntary contributions and records are kept of donor agreements. No problems were observed.

C. Special operations funds for the Tracking and Intelligence Units

31. In order to provide funds for operating expenses incurred by OTP investigators in the performance of their duties, the ICTY Registry blocked an amount of $150,000 from the travel budget line in September 2002. OIOS noted that the prior authorization of the Under-Secretary-General for Management for these expenses had not been obtained as per rule 105.3 of the Financial Rules of the United Nations. Further, the arrangement did not provide adequate control or accountability over the

use of the funds. OIOS brought this to the attention of OTP management, who agreed to obtain approval for the deployment of required resources and to finalize the procedures so that accounting and expenditure of resources were in accordance with the United Nations Financial Rules. The ICTR arrangement described in paragraph 32 below is, in the opinion of OIOS, the appropriate funding mechanism for handling this type of expenditure. *ICTY OTP commented that it was currently finalizing new guidelines, largely similar to the ones adopted by ICTR OTP, to ensure appropriate accounting and expenditures of resources.*

32. ICTR OTP had set up a confidential cash fund in 1997 to enable funding of the Investigations Division's Intelligence and Tracking Unit. OIOS reviewed the operation of the fund in 2002 and agreed upon a number of measures with ICTR OTP to improve the operation of the fund in accordance with the financial rules and to improve document management.

V. Information technology management

33. OTP did not have a common approach towards the management of its information technology (IT) as recommended by the General Assembly in its reports entitled "Information technology in the Secretariat: a plan of action" (A/55/780) and "Information and communication technology strategy" (A/57/620) as well as in Secretary-General's bulletin ST/SGB/2003/5, entitled "Information and Communications Technology Board":

(a) **IT committees**. ICTY OTP had recognized that previous attempts to use IT had not been effective, with investigators and trial teams developing their own databases resulting in multiple unconnected databases. In 2002, it established an IT committee comprising OTP senior management staff and the Chief of the Information Technology Services Section. However, ICTR OTP has not established a similar committee to deal with OTP-specific needs.

(b) **IT needs assessment**. The ICTY OTP IT committee conducted an IT needs assessment in 2002, and prepared a comprehensive IT plan in 2003. The plan was a good starting point as it identified an integrated IT solution to its needs. ICTR was not included in this exercise, so that an opportunity for creating synergies was lost. The plan was also not shared with ICTR OTP, which conducted an independent IT needs assessment.

34. OTP had two System Development Units, comprising 22 staff in ICTY and 3 staff in ICTR, at an annual staff cost of approximately $1 million. This arrangement duplicated functions of the Information Technology Services Section in ICTY and of the Electronic Data Processing Section in ICTR, which were to serve all organs of the Tribunals. This included provision of IT training, helpdesk functions, systems development activities and two sets of servers for OTP and the Registry, respectively. Additional costs arising as a result of this duplication of function in ICTY OTP were estimated to be approximately $100,000 in 2003.

35. *ICTY OTP commented that it was still working out solutions to its unique problems at The Hague due to the amount of information, evidence and documents in its evidence and judicial databases, which was not comparable with ICTR OTP, and for that matter with other United Nations institutions. Nonetheless, ICTY OTP was currently working towards the integration of its IT with the services provided by*

the ICTY Registry. A working group had been established with the Information Technology Services Section to develop a combined approach, in particular regarding the developers and the training and software support services in OTP with those of the Registry. It should be noted that, when ICTR senior OTP management visited ICTY in The Hague, they were briefed and informed of the actions being taken at The Hague to resolve the unique IT problems. On several occasions in past years, ICTY OTP had sent its IT staff to Arusha and Kigali to assist with ICTR IT needs, and in that process the ICTY had benefited from ICTR practices. In that regard there had been a healthy interchange for many years. OIOS appreciates that there has been exchange of information. However OIOS notes that there has been no concrete action plan to share best practices and lessons learned to implement coherent IT strategies. Further, though there may be certain unique requirements in ICTY, it is undeniable that both ICTY OTP and ICTR OTP have similar operational requirements and can derive synergy.

36. Though ICTR and ICTY will now have separate Prosecutors, OIOS is of the opinion that there are synergies to be gained by both OTPs working closely together in defining their IT needs.

VI. Recommendations

37. OIOS made the following recommendations to improve the management of the Office of the Prosecutor. Management comments on the implementation status of the recommendations are shown in italics.

38. *The new Prosecutor of ICTR commented that he had taken note of the observations and recommendations contained in the report and would take the necessary steps to deal with those that required his attention.*

Recommendation 1

39. To arrive at completion dates for their mandates, to monitor their completion and ensure transparency in presenting information to the Security Council and the General Assembly, ICTY OTP and ICTR OTP should work with the respective Chambers and Registry staff to:

(a) Establish dedicated Tribunal-wide steering committees comprising senior representatives, with a mandate and terms of reference that explain their roles and responsibilities for monitoring progress towards the completion dates. This includes planning the completion tasks to be performed; organizing the activities needed to carry out the plans; determining the procedures to be followed; assigning tasks; and addressing staffing issues that may arise;

(b) Produce a Tribunal-wide completion strategy document which identifies the factors that affect the achievement of completion dates and devise strategies to mitigate the impact of these factors;

(c) Improve OTP planning and monitoring mechanisms by identifying targets and other appropriate indicators that can be incorporated into work plans and used for monitoring staff performance;

(d) Establish OTP systems to ensure that accurate, consistent and complete information is presented to the Security Council and the General Assembly.

40. ICTY OTP commented:

(a) **Recommendation 1 (a)**. *ICTY OTP is fully committed to liaise with the other ICTY organs and ensure the adequate and efficient planning and monitoring of the completion strategy. To this end, OTP management regularly meets with senior representatives of all organs in the framework of the ICTY Coordination Committee. ICTY OTP also participates weekly in the scheduling committee meetings involving all three ICTY organs, where technical matters pertaining to the planning of judicial activities is discussed. Additionally, it works closely with the Registry in addressing all staffing issues, including those linked to the completion strategy.*

(b) **Recommendation 1 (b)**. *OTP has and will continue to collaborate closely with the other ICTY organs, in particular with the President, to ensure that completion strategy documents are regularly drafted with the involvement of all ICTY organs. The Prosecutor will continue to report regularly to the Security Council on the implementation of the completion strategy, as she began to do as early as 2001, and as is now provided for by resolution 1503 (2003).*

(c) **Recommendation 1 (c) and (d)**. *The ICTY OTP management is currently developing mechanisms to ensure that appropriate planning and monitoring mechanisms are further developed, so that its completion strategy and reports thereon are duly communicated both internally, to the OTP staff, and to United Nations Headquarters, notably to the Security Council and to the General Assembly.*

Recommendation 2

41. The ICTR Registry should seek assistance from the United Nations Development Programme in identifying a suitable United Nations agency, or other organization, to conduct an assessment of the impact of the closure of the Tribunal on the local economies of Arusha and Kigali and to make the results of the review available to the General Assembly for its consideration on action to minimize the impact of the closure, if any is identified.

Recommendation 3

42. To ensure that suitably qualified staff are recruited for ICTR OTP in a timely manner, the Registry and OTP should agree on their respective roles in human resources management and ensure that OTP staff involved in recruitment are provided with training in how to fulfil their roles in accordance with United Nations regulations and rules. This should include ensuring compliance with advice of the Office of Legal Affairs and article 15 (3)[11] of the ICTR statute, that the ICTR Registrar should ensure, on behalf of the Secretary-General, that he only appoints OTP staff recommended by the Prosecutor.

43. *ICTY OTP commented that the Prosecutor strongly supports this recommendation and believes that its implementation would greatly contribute to the improvement of a timely recruitment for OTP.*

Recommendation 4

44. To improve arrangements for the hiring and utilization of temporary staff in accordance with United Nations regulations and rules, and to ensure that their number is kept to the minimum required to support OTP activity:

(a) ICTY OTP should develop criteria and procedures for determining the number of GTA staff required in relation to overall staff requirements;

(b) The ICTR Registry should discontinue the services of ICTR OTP nurses and trauma counsellors currently hired as consultants or individual contractors and employ them as GTA staff as recommended by the Office of Human Resources Management or make proposals for the establishment of regular posts;

(c) ICTR OTP should work with the ICTR Registry to develop criteria and procedures to determine when to hire consultants or contractors and when to use GTA.

45. *ICTY OTP commented that it will continue to work in close cooperation with the Registry to develop criteria and procedures for determining the number of GTA staff required in relation to overall staff requirements.*

Recommendation 5

46. To ensure that ICTY OTP and ICTR OTP continue to maintain cost-effective solutions to their document translation needs:

(a) ICTY OTP should consolidate its language support staff into one unit and discuss with the Registry how to minimize the use of prosecution resources in the administration, monitoring and quality control of the work of its language support staff;

(b) ICTR OTP should consider the ICTY practice of using uncertified translations.

47. *ICTY OTP commented that it is in the process of implementing this recommendation and expects that it will be fully implemented by the end of November 2003. The management of OTP language support staff is being consolidated to improve the monitoring of the output and the quality of the work produced. The language support staff is being integrated into the Documents and Video Indexing Unit so as to ensure appropriate coordination and more effective management of the resources available.*

Recommendation 6

48. To ensure that voluntary contributions earmarked for ICTR OTP are used in accordance with donor agreements, the ICTR Registrar should request the Office of Programme Planning and Budget Accounts to provide copies of all documents submitted by donors, which should be shared with OTP.

Recommendation 7

49. To improve accountability of the special funding for investigators, ICTY OTP should request the ICTY Registry to set up a special operations cash fund in line with that established by ICTR OTP.

50. *ICTY OTP is in the process of implementing this recommendation. It is finalizing new guidelines pertaining to the special funding for investigations, largely similar to the ones adopted by ICTR OTP, so as to ensure appropriate accounting and expenditures of resources.*

Recommendation 8

51. To ensure effective, economic and efficient utilization of IT:

(a) ICTR OTP should (i) establish an IT steering committee with terms of reference which are in line with the requirements of Secretary-General's bulletin ST/SGB/2001/5 and (ii) ensure that this body fosters close ties and exchanges best practices and lessons learned with the ICTY committee;

(b) ICTY OTP and ICTR OTP should review with their respective registries ways to reduce the $1 million dedicated to the provision of OTP IT support.

52. *ICTY OTP commented that it is in the process of implementing this recommendation and expects that it will be fully implemented by the end of December 2003. It is currently working at furthering the integration of its IT with the services provided by the ICTY Registry. A working group has been established with the Information Technology Services Section to develop a combined approach, in particular regarding the developers and the training and software support services in OTP with those of the Registry.*

(*Signed*) Dileep **Nair**
Under-Secretary-General for Internal Oversight Services

Notes

[1] Security Council resolution 1503 (2003).

[2] See S/2002/678.

[3] A/57/163-S/2002/733.

[4] A/54/634, para. 30.

[5] A/57/163-S/2002/733, para. 9.

[6] See A/56/351-S/2001/863.

[7] A/55/273-S/2000/777, para. 174.

[8] A/57/379-S/2002/985, para. 207.

[9] A/58/449, para. 22.

[10] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 5K* (A/57/5/Add.11).

[11] Now article 15 (5).